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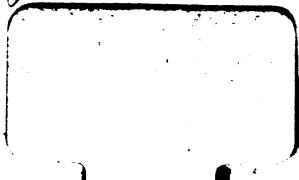
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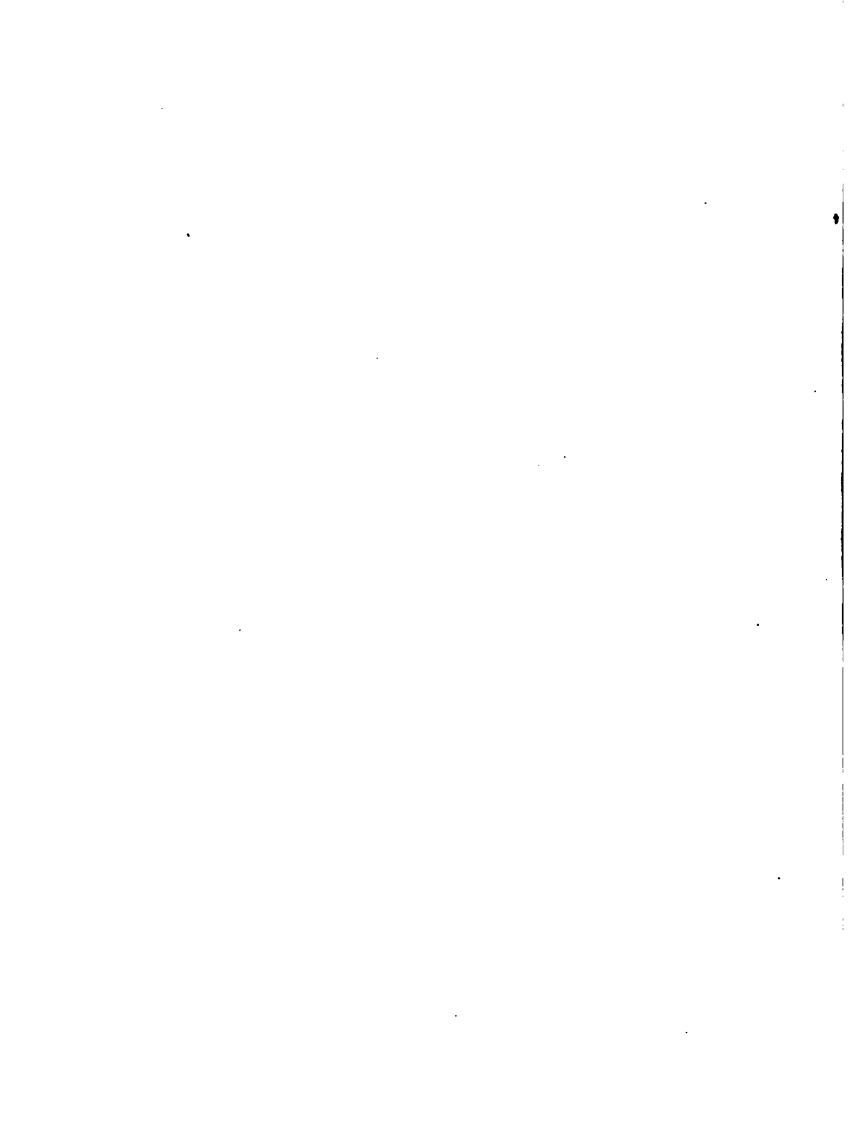


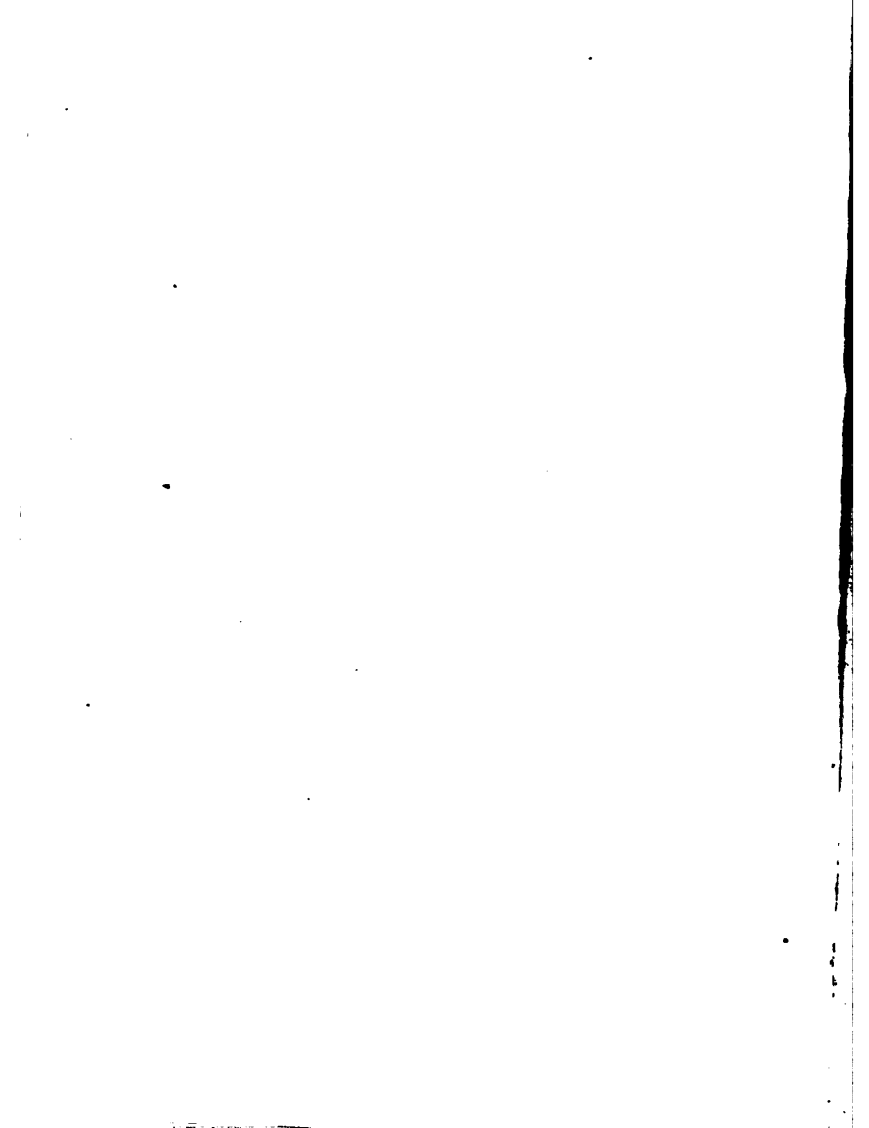
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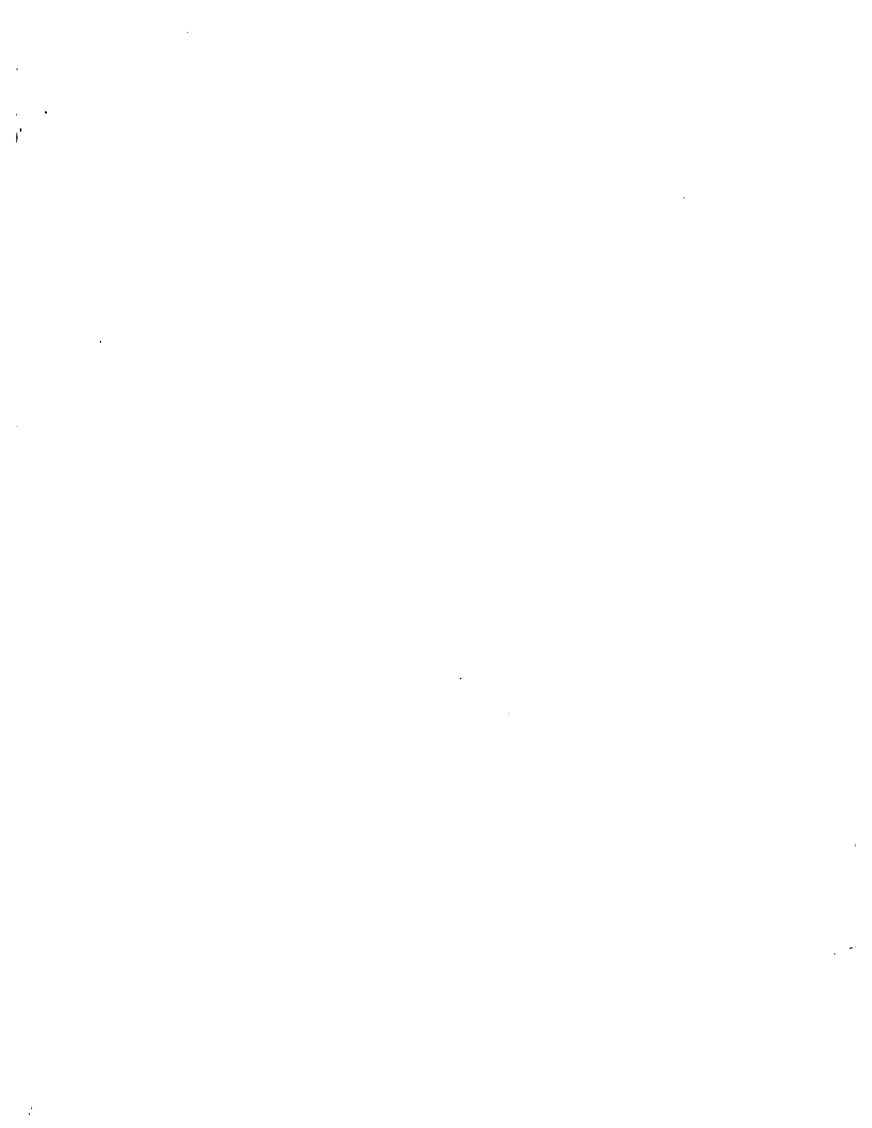


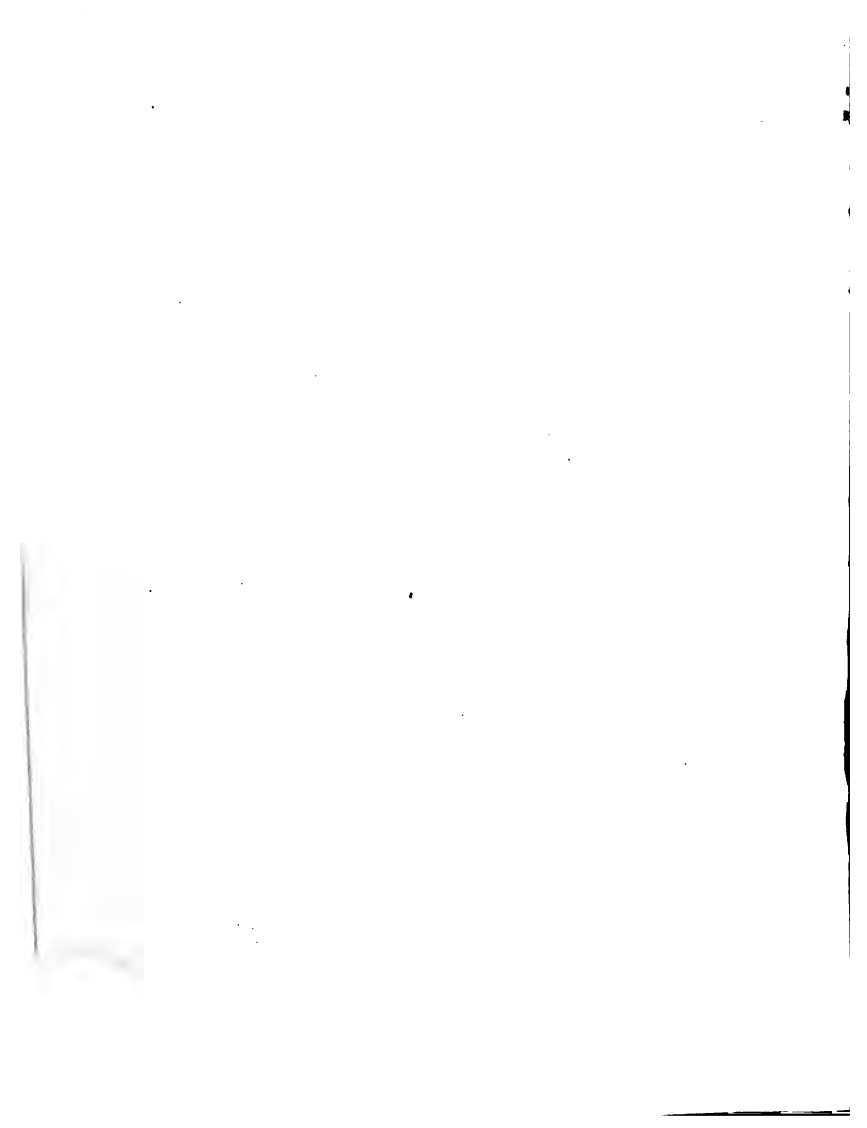


JOHN MARSHALL

February 4, 1901

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JOHN MARSHALL C#

An Address delivered on

February 4, 1901

Robert Thomas by
R. T. BARTON,
of Winchester, Virginia

before

Washington & Lee University

at

Lexington, Virginia

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JOHN MARSHALL



ASTENED between the leaves of one of the volumes of a very handsome edition of Marshall's life of Washington, in the State Library at Richmond, is the *fac simile* of a brief sketch of John Marshall written by himself.

This is what it says:

"Richmond, March 22, 1818.

SIR:—I was born on the 24th of September 1755 in the County of Fauquier in Virginia. My Father—Thomas Marshall was the eldest son of John Marshall who intermarried with a Miss Markham whose parents migrated from Wales and settled in the County of Westmoreland in Virginia, where my father was born.

My mother was named Mary Keith. She was the daughter of a clergyman of the name of Keith who migrated from Scotland and intermarried with a Miss Randolph of James River.

I was educated at home under the direction of my father, who was a planter, but was often called from home as a surveyor. From my infancy I was destined to the bar; but the contest between the mother country and her colonies drew me from my studies and my father from the superintendence of the same; and in September 1776 I entered into the service as a subaltern. I continued in the army until the year 1781, when, being without a command I resigned my commission, in the interval between the invasion of Virginia by Arnold and Philips.

In the year 1782 I was elected into the Legislature of Virginia and in the fall session of the same year was chosen a member of the Executive Council of that State.

In January 1783 I intermarried with Mary Willis Ambler, the second daughter of Mr. Jacquelin Ambler, then Treasurer of Virginia, who was the third son of Mr. Richard Ambler, a gentleman who had migrated from England and settled in York river Town in Virginia. In April 1784 I resigned my seat in the Executive Assembly" (meaning by this the Executive Council, as

his resignation took place after the close of his service in the General Assembly for the term to which he had been elected in 1782) "I came to the bar, at which I continued, declining any other public office than a seat in the Legislature, until the year 1797, when I was associated with Genl. Pinckney and Mr. Gerry in a mission to France. In 1798 I returned to the United States and in the spring of 1799 was elected a member of Congress, a candidate for which, much against my inclination, I was induced to become by the request of General Washington.

At the close of the first session I was nominated first to the Department of war and afterwards to that of State, which last office I accepted and in which I continued until the beginning of the year 1801, when Mr. Ellsworth having resigned and Mr. Jay having declined his appointment, I was nominated to the office of Chief Justice, which I still hold.

J. MARSHALL."

This brief and very modest outline of himself, in which he fails to mention that he had been offered and declined the position of Attorney General of the United States, and also a seat as Asso-

ciate Justice on the bench of the Supreme Court, was doubtless written at the request of some one who desired to use it in the preparation of a memorial of Marshall. I do not know the story of it and do not know if it is known. It will suffice for the mere biographical part of what I wish to say of my subject to-night. But no analysis of a great man is satisfactory without some view of his home and of his person. With a home Marshall has no very suggestive connection, because he lived longest in a mere house in a city which is still standing in pretty much the condition in which he left it. Moreover the things he did which made him famous for all time are, with one exception, not thought of as particularly associated with Richmond, or at least not with his dwelling there. For some reason too the surroundings and homes of great Philosophers, Scientists or Writers, affect us with deeper interest than do those of great lawyers.

But Marshalls personality—his appearance, manner, and disposition, are and always will be of great interest to those who wish to truly understand the moral and intellectual forces which made up the man:—we cannot separate two sets of qualities until science shall solve the problem of the connection between the physical and the psychological man.

The beginnings of the revolution found him at his father's home in Fauquier County, a student, and rejoicing in the possession of a copy of Blackstone then but recently published; but intermitting his studies with many calls for his services as surveyor. This graphic description is given of the young man not then twenty one years of age, when in September 1776, as a lieutenant in a military company from Fauquier County he joined Col. Patrick Henry in the expedition to protect Williamsburg from the expected depredations of the expelled Lord Dunmore—"He was" says the writer "about six feet high; straight and rather

slender, of dark complexion with a face nearly a circle in its outline, with eyes dark to blackness, penetrating and beaming with intelligence and good nature, over which an upright forehead, rather low, was terminated in a horizontal line by a mass of raven black hair of unusual thickness."

When about forty-five years of age, the time of his appointment to the bench, Judge Story gives this description of him "of a tall, slender figure, not graceful or imposing, but erect and steady. His hair is black; his eyes small and twinkling; his forehead rather low, but his features are in general harmonious. His manners are plain yet dignified, and an unaffected modesty diffuses itself through all his actions. His dress is very simple yet neat; his language chaste but hardly eloquent."

About two years later, during the trial of Aaron Burr at Richmond, Wm. Wirt thus writes of him in "Letters of a British Spy":—"The Chief Justice of the United States is in person tall, meager, emaciated; his muscles relaxed, and his joints so

loosely connected as not only to disqualify him apparently for any vigorous exertion of the body, but to destroy anything like elegance and harmony in his air and movements. Indeed in his whole appearance and demeanor, dress, attitude, gesture, sitting, standing or walking, he is as far removed from the idealized graces of Lord Chesterfield as any other gentleman on earth. His head and face are small in proportion to his height; his complexion swarthy; the muscles of his face being relaxed, give him the appearance of a man of fifty years of age, nor can he be much younger; his countenance has a faithful expression of great good humor and hilarity; while his black eyes—that unerring index—possess an irradiating spirit which proclaims the imperial powers of the mind that sits enthroned within.”

From the general concurrence of these descriptions it seems fair to infer that the portrait with which we are all familiar is not a bad likeness; and that the traditions of awkwardness of movement and gesture, negligence in dress, and what would now be called “general dowdiness” is not far

from the mark. And yet reading these descriptions with my eyes resting now and then upon a faithful copy made by a fine artist of a portrait taken at the age of forty-five, which was presented by the Chief Justice himself to a near relation, there is in it so much of a fine intelligence; of grave and earnest thoughtfulness, and yet of kindly, gracious human feeling, that it is hard to believe that his was not a face that was good to look at.

An English traveller who saw him at Richmond in his extreme old age, writes of him:—
“The Judge is a tall, venerable man, about 80 years of age, his hair tied in a queue and with a countenance indicating that simplicity of mind and benignity which so eminently distinguish his character.”

At about the same time, when he was 78 years of age Judge Story writes thus of their life in Washington: “Having some leisure on our hands the Chief Justice and myself have devoted some of it to attendance upon the theatre to hear Miss

Fanny Kemble who has been in the city the past week. We attended on Monday night and on the Chief Justice entering into the box he was cheered in a marked manner. He behaved, as he always does, with extreme modesty and seemed not to know that the compliment was designed for him. We have seen Miss Kemble as Julia in "The Hunchback" and as Mrs. Haller in "The Stranger." * * * I have never seen any female acting at all comparable to her's. She is so graceful that you forget that she is not very handsome. In Mrs. Haller she threw the whole audience into tears. The Chief Justice shed them in common with younger eyes."

All accounts agree as to his affability, courtesy and approachableness; and in his simple democratic tastes and habits. Bishop Meade speaks of being on a street in Richmond near his home between daybreak and sunrise, and meeting him "on horseback with a bag of clover seed lying before him, which he was carrying to his farm, it being the time of sowing such seed."

A distinguished citizen of this State holding high official position recently told me that some

time ago talking with an aged relative who was nearly connected with and knew Judge Marshall very well, he asked her what in her recollection of the Judge impressed her most, and she replied "his humility."

Humility loses some of its charm when made the subject of even *post mortem* praise. On the simple stone over his grave at Ecclefechan, the relatives of Thomas Carlyle have caused to be carved the word "Humilitas" and the pilgrim to that shrine reads the inscription with an undefined sense of inappropriateness as if this quality was not to be boasted of even on a tombstone. Should the buried Thomas ever rise from the grave and read the inscription, one feels some curiosity to know what his own remarks would be.

But the flower of modesty that blossoms on the tree of humbleness of spirit is a joy that is more the beholder's than the possessor's, and its rarity gives it a value too great to permit it to be overlooked in any sketch of character.

He who has dwelt upon the life and character of Marshall cannot fail to be impressed with two things, first, that he never had an ambition that he was not gladly willing to sacrifice for the public good; and second, that he never thought that he was or ever would be considered a great man.

Two instances among many of his becoming modesty deserve this passing notice. When it was known that he was writing the life of Washington the book was expected with a degree of impatience and enthusiasm unprecedented then and which could hardly be repeated now in this time of redundancy of books. From his own position and the subject about which he was writing, he might well have expected the work to give him a reputation second only to his great fame as a Judge. And yet when the book was ready for the press he refused to permit his name to appear as author, preferring that the title page should simply designate it as "Compiled under the inspection of Hon. Bushrod Washington."

Persuaded at length to consent to his name as author appearing he stipulated that his title as Chief Justice should not be added, so the book bears the simple inscription "By John Marshall."

This book came out in four volumes, reduced in the second edition to two and even then it is possibly open to the criticism which Talleyrand impudently made of Marshall's able defence of the claim of the United States against France, that it was so long that nobody could find time to read it. That this book did not in fact add to his fame does not detract from the tasteful modesty of the author.

The other instance was the preparation by him of the inscription for his tomb made but a few days before his death. It reads "John Marshall son of Thomas and Mary Marshall, was born on the 24th of September 1755; inter-married with Mary Willis Ambler the 3d of January, 1783; departed this life — day of ——— 18—."

Had he been less than modest he might with propriety have written only the words "John Marshall" for it is not possible in the order of human events that there will ever be another who might be mistaken for him.

I have spoken of Marshall as a pious man and so all who have written of him term him. He was indeed a deeply pious and religious man although he could hardly have stood the test of modern orthodoxy. He believed in general terms in the revealed religion of the Bible, but he did not believe in the Divinity of Christ, being in this respect nearer the Unitarian creed than to any other. For most of his life he seems like Thomas Carlyle, to have been a creedless christian. Both of those great men were deeply religious and spiritually minded. Neither ever belonged to any religious denomination or society, and yet each from early tradition and strong clannishness leaned toward and conformed to the worship of his father's religion. Marshall, al-

though greatly opposed to the established Church of England and considering its establishment "monstrous in principle;" and although as late as 1830 he declared that he thought the Protestant Episcopal Church in Virginia so dead that it was not worth the attempt to revive it, yet always conformed to the worship of this Church and found in its beautiful liturgy and ceremonies the satisfaction, the cravings of his spiritual nature demanded. Bishop Meade describes him as prostrating "his tall form before the rude, low benches without back, at Cool Spring meeting house, in the midst of his children and grand-children and his neighbors." And those familiar in after years with that rude building in the woods, and recalling the good people, most of whom were of his name and lineage who assembled Sunday after Sunday to worship there, can take to themselves without difficulty the graphic picture which the Bishop paints.

It is written of the Chief Justice that a few months before his death he changed his views as

to the Divinity of Christ and proposed to become a member of the Church but he never carried out this purpose.

Into the inner circle of his domestic life we open the door but a little way. The glimpse we get shows him the married lover, and his wife his sweetheart 'til she died.

Of his devotion to his children and grand-children there are yet living witnesses and participants. One homely little human touch brings us closer to the man.

Judge Story had written him in deep affliction at the death of a child and asked him if he himself had ever sustained such a loss. Judge Marshall's reply states that he had lost four children and touchingly alludes to the death of a six year old daughter and adds, "she was followed in a fortnight by her brother whose death was attended by a circumstance we can never forget. When the child was supposed to be dying I tore the distracted mother from the bedside. We soon heard

voices in the room which we considered as indicating the death of the infant. We believed him to be dead. I went into the room and found him still breathing. I returned and as the pang of his death had been felt by his mother and I was confident he must die, I concealed his being alive and prevailed on her to take refuge with her mother who lived the next door across an open square from her. The child lived two days, during which I was agonized with its condition and with the occasional hope, though the case was desperate, that I might enrapture his mother with the intelligence of his restoration to us. After the event had taken place his mother could not bear to return to the house she had left and remained with her mother a fortnight. I then addressed to her a letter in verse in which our mutual loss was deplored; our lost children spoken of with a parental feeling which belonged to the occasion; her affection for those which survived was appealed to, and her religious confidence in the wisdom of goodness and Providence excited. The letter closed with a pressing invitation to return to me and her children."

The young lieutenant was a gallant soldier. Like so many young Virginians of near a century later, and under circumstances which were thought by them to strikingly resemble the conditions immediately preceding the revolution, Marshall prepared for his part in the coming war by joining a military company some time in advance of the need for its actual services. Once in real war he served for about four years with courage and distinction in a regiment of which his father was the Major, and seeing hard fighting and enduring great hardships at Great Bridge, Germantown, Monmouth, Stony Point, Iron Hill, Brandywine, Paulus Hook, and in the dreadful winter quarters at Valley Forge.

In 1780 he had reached the rank of Captain, but the term of enlistment of his men having expired, he was without a command. Going to Williamsburg in the hope of taking service in a new corps which it was thought would be raised by the State, and being detained there awaiting

the tardy action of the Legislature, he availed himself of that opportunity to attend the law lectures of Chancellor Wythe at William and Mary. This was the only systematic legal training and education that he ever had, and this, under the circumstances, could hardly be regarded of great value, certainly not to the average student.

In the summer of 1780 he obtained a license to practice law, but he soon entered the army again and was in the field in 1780 and 1781. During the year 1781 he resigned his commission and commenced the practice of the law in Fauquier County Va. The next year he was a member of the Legislature where he continued to serve for a number of terms, at first as a delegate from Fauquier and later from Henrico County.

Marshall attained only the rank of Captain in the Virginia line, but, as has happened with so many ex-captains and of even lower rank in our civil war, he was called "General" after the termination of the revolutionary war. Washington

and President John Adams give him this title in their correspondence, and Pinckney and Gerry, his associates on the French Mission, call him "General" even in their formal communications to the government. The "Generals" of our army on a peace basis will be glad to know of this precedent. Marshall however always spoke of himself as Mr. Marshall.

At the bar he rose rapidly and it was not long before he felt that he should play his part upon a larger stage than Fauquier County afforded; so in 1783 he removed to Richmond which was his home until his death 42 years afterwards, altho he spent a part of nearly every spring or summer at his sons home, his own old home, of Oak Hill in Fauquier.

The lack of technical legal education was less felt by Marshall as a barrier to his success at the bar than would be felt at this time by a man of equally commanding intellect. For the more important legal questions of that time there were

few or no precedents to be found. Text books were very rare indeed, and the reports of decided cases were but a small percentage of the multitude which now bewilders research. The lawyers of 1785 had to rely principally upon the native force of reason; upon an instinctive sense of right; and upon the application to each case of those fixed principles upon which the science of the law is founded. Comparatively few legal problems could there be solved by the now familiar phrase "it is so decided," so that between men of equal intellect there was nothing like the disparity in efficiency at the bar which systematic training and familiarity with the reports now make.

Marshall was not only a man of the highest order of mind, but he possessed an unusual degree of patient industry. I mean of patience *and* industry, for not uncommonly there is patience without industry and industry without patience.

Without the combination neither quality is of great value at the bar.

After every great war there comes up for solution a flood of new questions. But after a revolutionary war whereby a new nation was created on a new continent; or to complicate the matter more—when thirteen new states were recognized by the terms of peace as so many independent sovereigns, connected together by the loose and uncertain tie of a treaty made merely to meet the emergency of common danger and common defence; when power was suddenly conceded to have passed away from King and Parliament directly to the people, with all the tremendous changes which such a transition involved; then indeed we might expect the difficulty and novelty of questions affecting individual rights of person and property to be immensely increased by the questions which concerned the new government and the political conditions of the States as between themselves.

For such conditions as this the force of character, the capacity for patient investigation, of calm thought, and the unrivalled power of reasoning which Marshall possessed, peculiarly fitted him, and in a multitude of men of great ability and often of superior attainments to Marshall's, at the Richmond bar, he soon took the lead and at the age of 40 was regarded as the first lawyer in the State. Of him Wm. Wirt wrote that he "deserves to be considered as one of the most eloquent men in the world, if eloquence may be said to consist in the power of seizing the attention with irresistible force and never permitting it to elude the grasp until the hearer has received the conviction which the speaker intends. He possesses one original and almost supernatural faculty, the faculty of developing a subject by a single glance of his mind, and detecting at once the very point on which every contingency depends. No matter what the question, though ten times more knotty than the gnarled oak, the lightning of Heaven is not more rapid nor more resistless than his astonishing perception. Nor

does the exercise of it seem to cost him an effort. On the contrary it is as easy as vision. I am persuaded that his eyes do not fly over a landscape and take in its various objects with more promptitude and facility than his mind embraces and analyzes the most complex subjects."

This flowery and decidedly too enthusiastic description, if written now of any man, would serve rather to provoke a smile than to carry conviction. For those times this style was not considered too redundant, and the description is of value as showing how such a man as Marshall impressed such a man as Wirt.

But making all allowances, from amid the leaves and flowers of Wirt's abundant imagery we may gather fair impressions of Marshall's great force and power as a speaker; of his clear comprehension of his subject and his simple directness in presenting it; of a mind free from complexity or cloudiness; and possessing a rapid and accurate perception of the salient points of his case.

These are the qualities which entitle a lawyer to a seat at the top, and when to such peculiar fitness such peculiar opportunities were added, it is not to be wondered that Marshall was a crowned King in a royal race of jurists.

The school of the lawyer also is the school of the statesman, even tho many a scholar there only acquires that perverted education which makes him merely the politician. The discipline to which he is subjected; the knowledge of human nature which he acquires; the self control which comes from constant friction; all tend to give him those qualities which make up the rulers of the State. Very far from being true is it that all lawyers acquire this fitness in any degree; and there are many others who do acquire it without the discipline of the bar; but between men of anywhere like equal ability, the one educated for the bar and having practiced his profession is nine times out of ten fitter for such duties than the man who had not those advantages.

More than this the members of the bar are the educators of the community in public matters; and their influence for good or for evil in matters which concern the State, even tho it be popular to regard all lawyers as unpopular, has always in a free country outweighed that of any other class of men.

Marshall loved his profession and was absorbed in it and for a long time resolutely turned from all thought of politics or place. Twice he was offered high public position and declined. Washington would have made him his Attorney General, and Adams offered him a place on the Supreme Bench, but he could not be persuaded to accept either.

But absorbed in and devoted as he was to the law, there were some things that he loved more. With all his heart and mind he loved liberty, and with as much devotion he loved order and the rule of law. He was not much of a theorist and did not indulge much in mere abstractions about

the rights of man, but he was ready to die for the maintenance of the right of every man to think, and within bounds to speak and write as he pleased; to be protected in the pursuit of happiness in his own way; to be safe in his person and property; and to be free from responsibility for his acts as a citizen to any man, but only to the law of the land. To him the tyranny of a King was no worse than the tyranny of a mob, even tho that mob should be called a Congress or a Legislature.

Thomas Jefferson went to England and conceiving himself to have been affronted there, hated ever after everything English, not even appreciating those bulwarks of personal liberty, of which Jefferson posed as the special apostle, and which England alone in all the world had offered for its protection. He went to France when Louis XVI still reigned and was received and treated with that degree of courtesy and kindness, which his own attractive personality instinctively

solicited, and of which no people on the face of the Earth are more capable than the French.

But he saw existing there the wrongs which the then political system of France daily heaped on the liberties of the subject; the cruel monopolies which took away from men the right to make a living; the class distinctions and privileges which divided the people between a body of masters and a body of servants; conditions which would have justified any revolution except the one which happened. Delighted with the personal kindness of the French people he came away filled with a deep sense of gratitude to them and a great affection and admiration for them. But he came away too from France before that revolution had begun to do its cruel and bloody work, and enthusiast as he was about abstract ideas, he idealized France, and tho not excusing the deeds of those revolutionary wild beasts yet they failed to impress upon him the lesson that if liberty is to survive upon the earth

there must always be the strong hand of government to protect it.

Marshall had learned his early lessons from the traditions of those who met at Runnymede more than from the teachings of Rousseau. He could not fail to regard the Common Law as the gospel of just judgement and the unwritten constitution of England as the foundation on which to build even a freer country and a government by the people, at least as stable as that of England. He went to France just after the revolution had ended, when the wreck and ruin of ancient institutions lay still in sight, as if some destroying fire had burned out all that the ages had accumulated for France, and when no real political structure had been erected in their stead; when the weak and corrupt Directory was exercising an unscrupulous tyranny in the name of Liberty, Equality and Fraternity, with all the foolish mockery of words and phrases which the madness of a licentious mob had set up for Freedom's charter.

The impressions made upon the two men were drawn, of course, from their different surroundings, but had their positions been reversed, there would not have been an equal reversal of impression, for natural tendency occupied with each the chief part in shaping the result. Before that time, then, and thereafter, in every movement for free government Marshall was strong for the law that must always stand guard where liberty may safely dwell.

On such a nature the condition of public affairs in America at that time rapidly formed opinion and confirmed impressions that were never afterwards effaced; made indeed the public man as he afterwards manifested himself in his public work.

Thirteen States bordering on each other, with generally only imaginary dividing lines, suddenly found their independence a fact accomplished and recognized by all the world. The bond of a common danger and a fierce fight for freedom, which had held these States together for a time, was

loosened almost in a day. With the reaction from the strain of self suppression which war and adversity had put upon them, they bounded back into the condition of separateness and jealousy which had existed before the revolution with all the additional aggravations which questions supervening a state of war had raised between them.

The State governments were supreme, and if each State had been strong enough to maintain itself against a foreign foe, and far enough from its neighbor to keep from fighting, the experiment of establishing and maintaining a liberty-protecting and law-compelling government, might well have been worked out in each State for itself. But situated as they were, if men were to live in peace at all there had to be some sort of common government. The thing they had, to serve this purpose, was the alliance known as the Confederation, formed, only for the emergency of the common fight against England, and entitled,

when peace came, only to the respect that, inadequate as it was for the occasion, association with the perils of the war and the ultimate triumph of the peace gave it.

This government had no power to control either Foreign Commerce or commerce between the States; it could make no treaty with foreign governments which it had the power to enforce at home; it could collect no taxes and enforce no laws; it could not protect the citizens of the States at home, nor shelter them from insult and injury abroad; it had no money in its treasury and no way of paying any debt it might by chance get credit to contract; it had no army or navy and no means of creating or maintaining one; it consequently had the full contempt of the people at home and lacked the respect of every foreign nation.

Some of the States were on the verge of flagrant war between themselves; nearly all of them were wrangling most of the time over questions of

border or customs charges upon Commerce between the States; the people of Pennsylvania and Connecticut were in actual armed conflict over matters concerning the Wyoming Valley; the gardeners, dairymen and poultry raisers of New Jersey and Connecticut had to pay duty upon the products brought to the New York market, and a sloop rowed across from Paulus Hook to Cortland street could only land upon the payment of duties and must obtain clearances at the Custom House like a ship from London. Similar conditions prevailed in a greater or less degree among all the States; even to the levying of a protective tariff in Virginia upon negro slaves imported for sale from the other States, to the advantage of the domestic product.

Of these conditions Washington wrote: "It is as clear to me as A B C that an extension of federal powers would make us one of the most happy, wealthy, respectable and powerful nations that ever inhabited the terrestrial globe. Without this we shall soon be everything which is the

direct reverse. I predict the worst consequences from a half-starved, limping government, always moving upon crutches and tottering at every step."

There seems to have been no difference of opinion about the utterly inadequate character of the existing Federal government, but there was a serious difference of opinion as to whether the formation of a more perfect union would not be to go from bad to worse. Mr. Grayson seems to have truly voiced the opinion of the great majority of the people of Virginia when he said: "I have not made up my mind whether it would not be better to bear the ills we have than to fly to those we know not of. I am however in no doubt about the weakness of the Federal government. If it remains much longer in its present state of imbecility we shall be one of the most contemptible nations on the face of the earth." In spite of all these obvious and imminent disadvantages and dangers, the most active politicians and the great body of the people loved their independent separateness too much to go willingly

into the bonds of a closer union. For this view there was much greater reason than it is easy for us now to realize. A distinguished Virginia writer says of the commercial conditions then existing in the State. "The net amount of money received in the treasury of Virginia from customs during the three-quarters of the year ending 31st of May 1788 was sixty thousand pounds sterling. The imports and exports of the State for 1788 must have reached over \$30,000,000. Ships of every nation waved their flags in Norfolk and Portsmouth. The period between the peace of 1783 and the adoption of the Federal Constitution was the most profitable in the history of the State, for of the two centuries and a half this was a time when she enjoyed the benefits of a trade regulated by her own authority, unrestricted and untaxed."

The adoption of a Constitution—any Constitution—meant the surrender of all this, possibly the giving of the absolute control of commerce into the hands of the rapidly increasing population of the Northern States who would naturally

use their power to the advancement of their own interests and the injury of that of the State of Virginia. Menacing as was this future fear, yet the present and immediate sacrifice was that the large revenue derived by the State from Customs would cease and the revenue theretofore derived therefrom and which had paid the expenses of the State would have to be supplied by direct taxation of the land, a burden, the inequality of which the State has never since found way of relief from.

But apart from the material questions of commercial profit and direct taxation, the surrender of the power and control of the State over its own affairs, to other—even to Federal hands, was most naturally a wrench of sentiment and a great sacrifice to make. In 1782 when the State yielded at first to the earnest request of Congress to give to it a limited and temporary power of collecting imposts, the Legislature soon repealed the act granting the right, because, as the repealing act

says: "the permitting any power other than the General Assembly of the Commonwealth to lay duties or taxes upon the citizens of the State within the same, is injurious to its sovereignty, may prove destructive to the rights and liberty of the people, and as far as Congress might exercise the same, is contrary to the spirit of the Confederation in the 8th article thereof."

The overweening influence and broad spirited self sacrificing patriotism of Washington, gave force to the movement for a Constitution and a more perfect union, while the skill, patience and wisdom of Madison gave it practical direction and result.

Marshall was not a member of the Convention which sat at Philadelphia through the hot summer months of 1787 forming the proposed new Constitution, but he was in full sympathy with it and when the lines began to be drawn between the Federalists and anti-Federalists he promptly aligned himself with the former. When the result of the Convention had received the approval

of Congress and was certified to the State for its action, Marshall became a member of the Convention which opened its session in June 1788 in the building used for a Capitol on the corner of 14th and Carey streets in Richmond, and which afterwards, because of the crowds which attended its meetings adjourned to the Academy building which stood near where the Monumental Church now stands.

In that battle of the giants which ensued Marshall stood with Madison, Randolph, Pendleton, Lee and Wythe in favour of ratifying the Constitution while the opposing forces were under the leadership of Henry, Mason, Monroe, Grayson, Harrison and Tyler.

To Washington first, from his retirement at Mt. Vernon, and then to Madison and Marshall next, the credit of the victory, tho by the narrow margin of 10 in a vote of 168, is generally conceded to belong.

Jefferson was away in France, but his sympathies are supposed to have been with the opposition, tho before the meeting of the convention he had thus succinctly and wisely outlined what its action should be—"to make us one nation as to foreign concerns and to keep us distinct in domestic ones, gives the outline of the proper division of power between the general and particular governments;" and after the Constitution was formulated he wrote of it from Paris that it "was a good canvas on which some strokes only wanted retouching."

The framers and supporters of the Constitution builded more if not better than they knew, and those who prophesied against it need not have lived a full century to have seen many of their anticipations realized. But still, looking back calmly now on all that has occurred since 1787, with the keenest appreciation of the wrongs that have been perpetrated in its name; of those which have resulted from straining and thus perverting its meaning and spirit in the interest of some ex-

pedience and looking forward to others which are almost sure to come, at which the founders would have stood aghast; after more than a century of trial of it under conditions that were no dreamed of and vicissitudes which the most pessimistic of the prophets had not prophesied about, one can but believe that the righteous verdict of humanity is, ought to be, and always will be, that the adoption of the Federal Constitution, at least so far as Virginia is concerned, was among the most exalted acts of self sacrificing patriotism, and the exercise of the profoundest wisdom recorded of any people in all the pages of history.

Had the States abandoned the Confederation and remained apart, which had become the alternative to the adoption of the Constitution and a more perfect union, they would probably soon have proceeded to cut each others throats, and with exhausted resources would have fallen an easy prey to the land hunger of the several Euro-

pean powers, or else as glad relief from such an extremity, would have renewed their allegiance to Great Britian and perhaps have realized the (from an English stand point) magnificent dream of Lord Roseberry. Had they escaped these dangers and survived a while, the chances are that such existences as they could have maintained would have been on the basis of the South American Republics; wars with each other and revolutions within. But it was because they were Anglo-Saxons and not Spaniards that none of these fates befel them; because they had the saving grace of common sense they sacrificed individual advantages and formed the union—the only political salvation for the whole; because they were the men they were, they gave up much, and instead of many struggling insignificant States they are to-day the great nation whose flag is the starry banner.

The general commercial advantages looked for did not come at once upon the adoption of the

Constitution. Neither on the other hand did the predicted injury to social and political conditions realize. The worst thing that supervened was the open Pandora's box of party cries, and the violent discussions and personal estrangements that differences of opinion about the construction of the Constitution at once gave rise to.

Of "the good old times" we are wont to speak, pretending to ourselves that we really think that the days which are dead were better than those we call the present. History, biography and experience all contradict this, and as we blow away the glamour that surrounds our heroes, we find that in their days there were full as many things to make the judicious grieve as now. Even the pessimist should find in this conclusion that there is still hope for the Republic.

Marshall was a serious minded, pious, conservative man; seldom given to strong expressions, nor indeed to any expression that he had not first well considered. Still he was not above calling

a spade, a spade, and when he said a thing it was because he knew he meant it. Bad then indeed must have been the conditions that made him write as he did in 1793 "there appears to me every day to be more folly, envy, malice and damned rascality in the world than there was the day before; and I do verily begin to think that plain downright honesty and unintriguing integrity will be kicked out of doors."

Tho he was, as he describes himself, a sanguine and hopeful man, he does not, as time went on, seem to have modified his views as to public conditions. His private correspondence shows a degree of disgust and not unnatural resentment which a man in his place could hardly now be made to feel.

He writes of himself that in the early period of the revolution he was touched with what he calls "certain enthusiastic notions" meaning about the brotherhood and equality of man in the abstract. Long before he went to France and saw for himself the logical evolution of those "enthusiastic

notions," they had ceased to have a strong hold upon him; and he looked at least with suspicion, upon those who posed as the peculiar apostles of the people. He had much more faith in the people than he had in the apostles. What he had seen of the Confederation made him earnestly desire the Constitution. Having the Constitution and knowing why they had it, and the meaning of the words of the clauses principally made the occasion of public discussions, he set his face resolutely against admitting any interpretation of it that would remand the country to the helpless conditions of the Confederation. In all his after public life, in the Legislature, in Congress, while Secretary of State, and chiefly while presiding over the Supreme Court, it is apparent that this was the dominant and controlling thought which pervaded him. He never did believe however in a much governed people, and his ideal was a fixed system which in all emergencies should prove equal to the protection of the individual liberties

of the citizen whether assailed by king or mob. The differences between the political schools to which Marshall and Jefferson respectively belonged is illustrated by expressions of each which neither meant literally to adhere to. Marshall writes that his experience in the army had given him "the habit of considering America as my country and Congress as my government." This was true neither before nor after the Constitution, in a literal sense; but in that direction was the trend of Marshall's mind and wishes.

Jefferson wrote the resolutions of 1798-99, but not as they were modified and adopted by the Legislatures of Kentucky and Virginia respectively. No government based upon the theories contained in them as they came from his pen, could have sustained itself against the shock of the first emergency, but they showed the trend of Jefferson's mind and wishes.

Marshall and Jefferson were quite nearly related to each other as Virginia relationships go; but

politically they started in different directions and their lines spread as they lengthened. After the Constitution, party differences meant personal and social differences, and to a degree that in these tolerating days seems impossible.

Jefferson hated the stronger, closer government idea, and seemed not to regard the spectre of the Confederation, the horrors of which he had fully appreciated but a few years before. He sneered at the work of the Commission to France, of which Marshall was a member, and against Prest. Adams he seemed in sympathy with the French Directory in their insolent and ignominious treatment of the envoys of the United States. He opposed Marshall for Congress and greatly resented Adams' appointment of him to be Chief Justice. After the date of Jefferson's election to the Presidency, Marshall's course in the Burr trial highly incensed him, and the decision of the case of *Marbury vs. Madison* filled him with spleen that he took no pains to conceal.

This dislike on the part of Jefferson, naturally did not fail of reciprocity, although the expressions of disapproval and resentment on Marshall's part seem principally to have been confined to his confidential correspondence which has only recently been published.

At the time of the contest for the Presidency between Jefferson and Burr, in reply to a letter from Hamilton denouncing Burr, Marshall speaks of Jefferson's foreign prejudices as unfitting him for the office of President, and adds: "In addition to this solid and immovable objection, Mr. Jefferson appears to me to be a man who will embody himself with the house of Representatives, and by weakening the office of President, he will increase his personal power. He will diminish his responsibility, sap the fundamental principles of the government, and become the leader of that party which is about to become the majority of the Legislature."

Later to his friend Judge Story, Marshall unbosoms himself against his mean traducers at a

time when his seat on the bench disarmed him from reply. But here there is much more of deep regret that the sapping and mining operations against one of the co-ordinate branches of the government should tend to its destruction than of resentment against criticisms of himself, personal as these were, beyond anything ever countenanced in later days by the most reckless of those who think that the Courts also should be included in the periodical mud throwing of political elections. These attacks Marshall, generally accurately, attributed directly to the influence or instigation of Jefferson.

Referring to an article written by Judge Spencer Roane, a warm personal friend of Jefferson, and who under the pseudonym of "Algernon Sidney" had fiercely attacked the decision of the Court in the case of *Cohen vs. Virginia*, Marshall said "There are other minor gentry who seek to curry favour and get into office by adding their mite of abuse, but I think for coarseness and malignity of invention Algernon Sidney surpas-

ses all party writers who have ever made pretensions to any degree of character. There is on this subject no such thing as a free press in Virginia, and of consequence the calumnies and misrepresentations of this gentleman will remain uncontradicted and will be believed to be true. He will be supposed to be the champion of States Rights, instead of being what he really is, the champion of dismemberment."

During the same year 1821, he wrote of Mr. Jefferson's expressed opinion about the Supreme Court "For Mr. Jefferson's opinion as respects this department it is not difficult to assign the cause. He is among the most ambitious and I suspect among the most unforgiving of men. His great power is over the mass of the people and this power is chiefly acquired by professions of democracy. Every check on the wild impulses of the moment is a check on his own power and he is unfriendly to the source from which it flows. He looks, of course, with ill will at an independent judiciary. That in a free country with a written constitution any intelligent man should wish a dependant judiciary, or should think that

the constitution is not a law for the court as well as the legislature would astonish me, if I had not learnt from observation that with many men the judgment is completely controlled by the passion."

Showing the apprehension that was continually on his mind Marshall wrote of the objections made to the decision of the Court in the case of *McCulloch vs. Maryland*. "If the principles which have been advanced on this occasion were to prevail, the Constitution would be converted into the old Confederation."

On July 13th, 1821, he writes: "In Virginia the tendency of things urges rapidly to the destruction of the government and the re-establishment of a league of sovereign States."

Of an attack which he thought was inspired by Jefferson he wrote "the coarseness of the language belongs exclusively to the author, its acerbity has been increased by his communication with the great Lama of the mountains" and in the same letter he adds, "A deep design to convert our government into a mere league of States has

taken strong hold of a powerful and violent party in Virginia. The attack upon the judiciary is in fact an attack upon the Union. The judicial department is well understood to be that through which the Government may be attacked most successfully, because it is without patronage and of course, without power. And it is equally well understood that every subtraction from its jurisdiction is a vital wound to the Government itself. The attack upon it therefore is a masked battery aimed at the Government itself. The whole attack, if not originating with Mr. Jefferson, is obviously approved and guided by him. It is, therefore, formidable in other States as well as in this and it behooves the friends of the Union to be more on the alert than they have been. An effort will certainly be made to repeal the 25th Section of the judiciary act."

In describing these conditions I have anticipated events, but no true picture can be drawn that does not give them full space. They show what apprehensions continually haunted the mind of Marshall, and that he regarded Jefferson as the arch enemy of the Union, bent on having the

Constitution so construed or the law so made as that practically the States should revert to the conditions of the Confederation. Thus also we see manifested in him a stern determination that come what might, he would hold the fort, would stand guard over the Constitution and see to it at every turn that not a line of it should be perverted from what he regarded as its true meaning, the very purposes and objects of its creation.

And now after all these years, whatever side we might have taken in the great controversy had we been here, or however our sympathies even now may tend, it seems to the careful observer as if it was better for the great result that these giants should have pulled in opposite directions, so that a more harmonious and safer conclusion could be reached—more of the State than Marshall perhaps would have had and more of Federal power than the opinions of Jefferson, at one time at least, seemed to regard as tolerable. Of this at any rate we are certain, we rise from the study

of these two great men grateful that it was Virginia's part to furnish to the Union, two such master mechanics in the great science of government making.

In 1797 while Marshall was still at the bar it was his lot to be measured with a man the very antipodes of him, and upon an arena upon which he had had no experience.

Not to detail the troubles which had arisen between France and the United States, it is enough to say that the course pursued by the Directory was destructive of American commerce and humiliating to the last degree to the American people. Marshall, Gen. Chas. C. Pinckney and Ellbridge Gerry were sent in the fall of 1797 to France to try to affect a treaty, to secure a cessation of the acts of hostility perpetrated by French vessels upon vessels sailing under the American flag and indemnity for the seizure of American cargoes. From the time of their landing in October until the following June, the three Commissioners were subject-

ed to a series of insults under the direction of Talleyrand and the Directory that no other than the dangerous existing circumstances could have justified the toleration of for a day.

The Commissioners were neither received nor recognized as envoys, Talleyrand representing the Directory as being indignant at some expressions in a recent message of President Adams to Congress and at an expression in a message of President Washington some years back. He therefore made these demands upon the Commissioners; an apology in the name of the United States to the Directory; the payment of \$250,000.00 as a *douceur*, to be given to the minister and the Directory, but the disposition of it to be at the direction of Talleyrand; the loan of a large sum of money to France to aid it in its war against England with which nation the United States was at peace, and to avoid such a breach of neutral obligation the loan was to be covered up by the purchase from France of some cloudy

claims against Holland. These things being done but especially the payment of the *douceur*, then the Directory *might* receive the Commissioners and *might* consider payment for the spoilation of American commerce, subject however to this other condition, that if anything should be found to be due to American citizens, America should pay it and regard it as an advance to France the repayment of which was to be made at some indefinite time.

The alternative offered to the refusal of these conditions was that France would declare open war against the United States and would ravage her coasts from hostile ships; the agents of Talleyrand pointing to the helpless condition of America with her less than 4,000,000 of scattered population; no army; but a nominal navy and slender credit, against the magnificent military and naval condition of France with Napoleon at the head of her victorious armies.

I do not mean to pursue this story into its details, interesting as it is even in the terse official accounts. I only want to point out the conditions which confronted the Commission, of which Marshall was the real head, in its encounter with Talleyrand.

On the American side of the diplomatic forces was the simple, honest minded, clear headed brave and direct Virginia gentleman, to whom intrigue of any sort was as obnoxious as it was unknown in his experience.

On the other side was Talleyrand, the most unscrupulous and accomplished diplomat of that or any other age.

Talleyrand the profligate Abbe; the unfrocked and secularized Bishop; who while still wearing the robes of his sacred office and officiating at a solemn religious ceremony on a great National occasion, after it was over wrote thus to his mistress "I hope you feel to what divinity I yesterday addressed my prayers and my oath of fide-

lity. You alone are the Supreme Being whom I adore and always will adore." This same Talleyrand who had served every government of France in turn, between Louis XVI and Louis Philippe—the Revolution—the Directory—Napoleon the Consul—Napoleon the Emperor—the Bourbons restored and Louis Philippe and had successively betrayed them all; the man who in three years time while holding the office of Foreign Minister of France had exacted and accepted from foreign governments for services against the governments he served (tho he claimed not against the interests of France) the sum of 14,650,000 francs; the man of whom in his lifetime a sketch by a reputable author was published which bore upon its title page these words. "The incarnate lie; the living perjury; impenitent Judas—annointed with the sacred oil he opens his career by betraying *God* himself. Alike at the Alter the double apostate treats the State as he treated the Church."

For nine months without wavering an inch from their resolute purpose to exact just treat-

ment for their country and unappalled by threats and grave apprehensions of danger, the Commissioners held their ground. To Talleyrand's taunt that in the opposition party at home France had friends and the Commissioners enemies who would avenge upon them their failure to comply with the French demands, Marshall replied that "M. Talleyrand might be assured that the fear of censure would not induce us to deserve it." At length, having accomplished nothing further than to show the fine contrast between the attitude of this Country and the weak nations of Europe who yielded promptly to the threats of France, Marshall and his associates retired with dignity from the scene. Upon his return to America (preceding Pinckney and Gerry) Marshall received an ovation. From Philadelpha the Secretary of State and many carriages with all the city cavalry, went out to meet him, and the bells rung all night while crowds followed him to stare at him wherever he appeared in public. A public din-

ner was given him and as his presence seemed to fan the sparks of patriotism into fire, it was there that utterance was given to the famous ringing sentence "millions for defence but not one cent for tribute."

The venerable Patrick Henry, who differed from Marshall politically almost as much as Jefferson did, wrote: "Tell Marshall I love him because he felt and acted as a republican, as an American."

At once Marshall returned to his practice at the bar, hoping now to spend in this way the remainder of his life. But the crisis of public affairs brought to him an appeal from Washington that he would be a candidate for Congress and to this he most reluctantly yielded. The Richmond district was politically hostile to him, but he was elected, Patrick Henry being one of his supporters. Before his term ended President Adams appointed him Secretary of State, having declined the War Department, and in January, 1801, much to his surprise he was nominated to be

Chief Justice of the United States and on February 4, 1801, just one hundred years ago to-day, he took his seat on the bench.

Besides the performance of the duties of his great office two incidents are conspicuous in the career of Marshall—the trial of Aaron Burr on the Circuit, and his service in the Virginia Convention.

Marshall had the calm courage to practically acquit Burr in obedience to the principles of law requiring it. Burr was then and is now generally regarded as the Judas Iscariot of American history, and though we are able now to take a much calmer and a more liberal view of his case, yet then there was a great popular demand for his conviction which was stimulated by all the influence of the Administration. This subject is full of interest to the student of American history, as all that period is, but we have no time to-night to dwell further upon it.

Marshall was 74 years old when the Virginia Convention was called. He most unwillingly consented to serve as a delegate. To his friend Judge Story he wrote: "I am almost ashamed of my weakness and irresolution when I tell you I am a member of our Convention. I was in earnest when I told you that I would not come into that body, and really believed that I should adhere to my determination, but I have acted like a girl addressed by a gentleman she does not positively dislike, but is unwilling to marry. She is sure to take the advice and persuasions of her friends."

Full too of interest, especially at this time, as this incident is, we must content ourselves with but a glance at the Convention; observing at the opening three tottering old men, among the best and noblest patriots that any country was ever blessed with. Madison and Marshall, each holding an arm of Monroe, as they escorted him to the chair, to preside over the deliberations of the body.

The Convention of 1829-'30 can scarcely be regarded as a success. The memory of it is that it undid much that was good, and added but little in the way of the organic law to the means of advancing the happiness and welfare of the people. The hand of the political tinkerer was in the work and manifested itself in the advantage given to the individual worker over the higher consideration of the good of the people.

Marshall's part in the Convention was not a very active one. He was an old man and by long service on the bench had lost the habit and art of speaking, nor was he much in sympathy with the chief objects that called the Convention together nor with the general sentiments of the party then dominant in Virginia. His main function seems to have been that of mediator and pacificator; affecting compromises where irreconcilable differences of opinion threatened to work harm to the Commonwealth. He lifted himself up however long enough to make one appeal and

to utter one loud and earnest cry for the honour and safety of free institutions—words that can never be forgotten, however much they may be disregarded “that the greatest scourge an angry heaven can inflict upon an ungrateful and sinning people was an ignorant and corrupt, or a dependant judiciary.”

But the life work of Marshall was his service as Chief Justice, extending from 1801 to 1835, the formative period of the new government—the translating time of the Constitution. This is the real monument he built for himself with a master hand, and whether men like it or not, it stands and and rules this Nation of 80,000,000 people today, tho’ made 100 years ago, with as much ease as it was adjusted to the demands of the 4,000,000 for whom immediately it was created.

Not to dwell upon matters with which all are or should be familiar, I content myself with summarizing the important points as to which Marshall declared the real meaning of the Constitution.

The Court decided that there can be no such thing in America as constructive treason; that an act of any legislature is void if repugnant to the Constitution, for said the Court in a statement of the case which is a model of simplicity and force, if both the law and the Constitution apply to a particular case and they differ, choice must be made between them, and the Constitution is superior to the law; that it is the peculiar province of the Courts alone to determine whether the law and the Constitution agree or differ; that no State legislature has the power to pass any law impairing the obligation of a contract; that a grant of a franchise is a contract and unless power to revoke it is reserved the grant is irrevocable; that the States form for many and most important purposes a single nation, and being constituent parts of the United States are members of one great empire, for some purposes sovereign and for some subordinate—"divided as the waves but united as the sea;" that Congress

has power to incorporate banks within the States and to have them free from State taxes; that while one Legislature is competent to repeal an act which a former Legislature was competent to pass, yet if any act be done under the law while in force a succeeding Legislature can not undo it; that the Supreme Court can revive a judgment of the Highest Court of a State in a case arising under the Constitution, Laws and Treaties of the United States.

These questions, now so trite and familiar, were once the great undecided questions of the day, upon the right answers to which and as to who had the right to give final answers, the people were as divided as the poles and as militant as hostile armies.

It is hardly possible now to realize how much of learning, courage, industry, patience, and judgment were needed to come to a right conclusion upon these matters and to dare to stand by them when reached. The glimpses we have had

of the personal hostilities which differences of political views created in those days give us some notion of the kind of atmosphere in which Judges had then to work,

But these are the chief stones of the great Federal building; the foundation stones and arch keys which sustain the structure. He who would understand this amazing piece of architecture must not content himself with gazing at what seems to be the completed pile but must go down into the crypts and examine its arches and supporting pillars. On every foundation wall; on the span of every arch and the curve of every pillar he will find the words "Marshall fecit."

Marshall was born on September 24th, 1755. On January 20th, 1801, when he was a little more than 45 years of age, he was nominated to be Chief Justice and on February 4th, 1801, just one hundred years ago to-day he took his seat on the bench. He died in Philadelphia July 6th, 1835, having almost attained his 80th year: still

in the active performance of the duties of his great office and tho' a very old man it is said of him that he was in full possession of his powerful intellect and in spite of four years of impaired health still enjoyed a remarkable degree of physical vigour.

Four years before his death he had made up his mind to resign. To strong remonstrances which were made against it he replied that both his judgment and his pride admonished him "not to hazard the disgrace of continuing in office a mere inefficient pageant." Moreover he felt the weariness of work and the desire in his old age of absolute rest, wishing, he said, to be so situated that he need read nothing but poetry and novels. The pressure of friends, the condition of public affairs and a great improvement in his health, prevailed with him, so he postponed his resignation from time to time, and died at last in harness.

To-day as at so many places in the land, we have come together on the one hundredth anni-

versary of the happy time for our country that made him in point of merit the Chief Justice of all the English speaking races, to do honor to the memory of this great man. What place more appropriate than this for such a ceremony? Where is there a happier conjunction of names? Washington—Lee—Marshall—the greatest of American Presidents and Patriots—the greatest of American soldiers—the greatest of American Jurists. Strangely like-minded men—whose ambitions were always second to their country's good—who feared not nor regarded consequences if only sure that they were right—to whom duty was the bright and morning star whose radiance no selfish sun could ever dim—whom weariness could not drive, nor any dalliance or hope of ease seduce to leave the path of right; who never said nor needed to resolve, but always knew that death would sooner come than they could do a conscious wrong—all three of them rebels at their State's command against their remoter

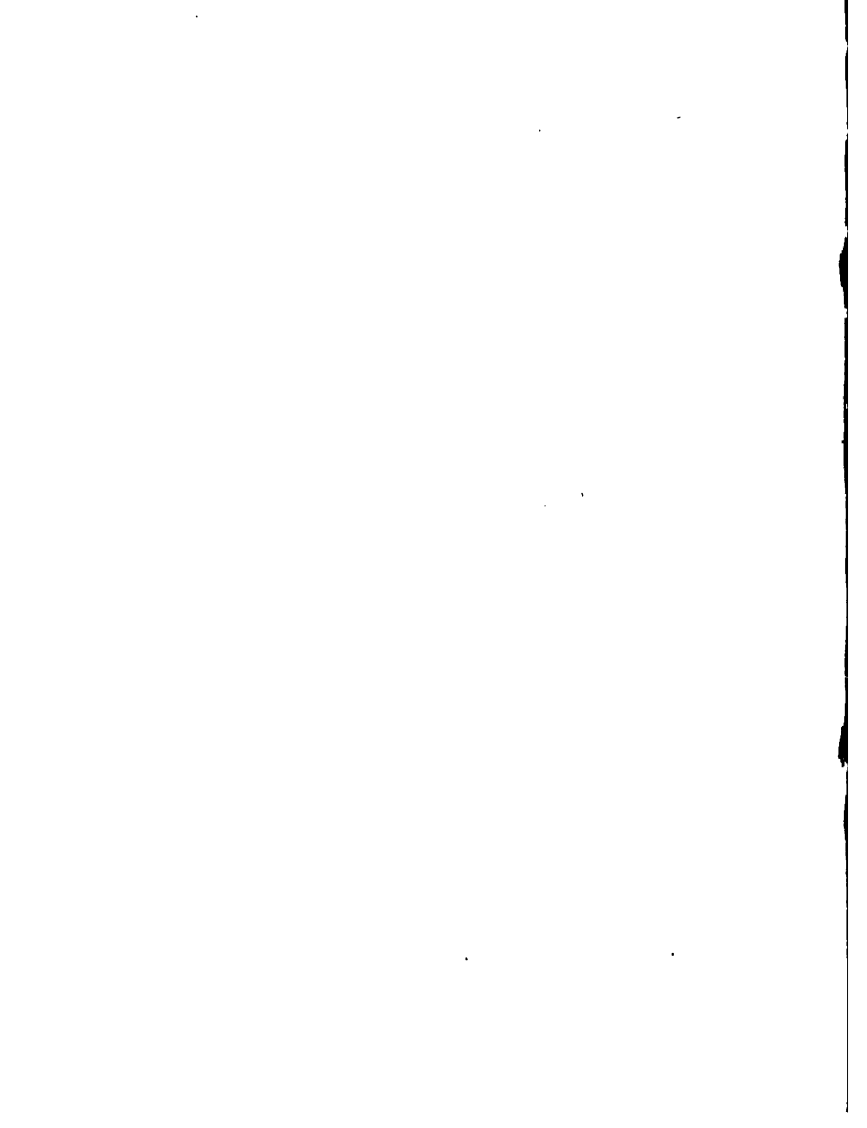
governments, but for whom, as years go on, their loudest praises come from the foes they fought—who hated things and acts of wrongs, but never men, nor ever wished an enemy an injury—who never told a lie or said or did a thing that was small or mean—whose instinctive standard was the chivalrous and great; who never sought revenge, nor bore in mind the hate of others, nor feared freely to forgive.

Men like these are made to answer prayers like this, and Marshall seems to have been in his time an act of Special Providence :

“God give us men. A time like this demands
Strong minds, great hearts, true faith and ready hands.
Men whom the love of office cannot kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honour, men who will not lie;
Men who can stand before a demagogue
And damn his treacherous flatteries without winking;
Tall men—sun crowned, who live above the fog
In public duty, and in private thinking.
For while the rabble with their thumb worn creeds
Their large professions and their little deeds
Mingle in selfish strife; Lo, Freedom weeps,
Wrong rules the land and waiting Justice sleeps.”

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